

Meeting Minutes from USFWS Informal Consultation for Endangered Species Act, March 19, 1993

In Attendance:

Bruce Thatcher	DOE, RFO
Mark Van Der Puy	DOE, RFO
Jeb Love	CDH
Melanie K. Backes	Westminster - Counsel
Dave Kaunisto	Westminster
Ron Hellbusch	Westminster
Peter Binney	CH2MHill
Michael Guillaume	EG&G - OU3
Bob Birk	DOE, RFO - ERD
Marcia B. Murdock	EG&G - END
Richard C. Flory	EG&G - END
Gail Hill	DOE, RFO - EPD
Mark DeHaven	ERO Resources
Bob Stoecker	Wildlife Consultant
Mike Bartleson	Broomfield
Mike Carter	CBO
John Wegrzyn	USFWS - CSO - Golden
Lee Carlson	USFWS - CSO - Golden
Tom Jackson	USFWS - Region 6 Denver
Bonnie Lavelle	EPA

Lee Carlson introduced the meeting as an informal consultation to determine adverse affects of proposed actions of meeting participants projects on the Standley Lake bald eagles, and explained that if affects were found, a formal consultation would be required. He outlined the USFWS' responsibilities in the event of a formal consultation. These responsibilities are that if and when a biological assessment is submitted to the USFWS, the USFWS has 90 days to consult, and then 45 days after that to write an opinion. This opinion would make a jeopardy/no jeopardy assessment, and consultation would examine alternatives to the projected plans. Mr. Carlson also stated that any biological assessments the meeting participants were involved with would be required to address downstream Platte River impacts in Nebraska. According to Mr. Carlson, the Platte River is the only critical habitat of concern for these projects, and impacts on it must be addressed.

The species of concern for impacts on critical habitat in the Platte River drainage include: whooping crane, piping plover, least tern, pallid sturgeon, American burying beetle, and eastern and western prairie fringed orchids. The main concern is how any of the projects may affect the net water flow - positively or negatively - in the Platte River in Nebraska.

One of the meeting participants noted that during surveys for the Broomfield Pipeline, *Spiranthes diluvialis* was discovered along the original pipeline route. The pipeline route was changed to achieve a "no effect" status for the pipeline project. The USFWS representatives

pointed out that this was the best way to respond to threatened or endangered species presence. This action averted the need for Section 7 Consultation.

Lee Carlson also explained "incidental take" as it would apply to the meeting participants. Incidental take in the instance of the Standley Lake bald eagles would most likely constitute the disturbance, or accidental harassment of the eagles due to conducting proposed construction or monitoring activities. He referred to Sections 7 (Interagency Cooperation), 9 (Prohibited Acts), and 10 (Exceptions) during this discussion, stating that Section 9 would not likely enter into the proposed activities. Section 10 deals with incidental take, and discusses mitigation of possible take. (After referring to Section 10 of the ESA, it appears that DOE/EG&G should pursue application for an incidental take permit with the USFWS. This permit would give us latitude should we require access to an area being used by the bald eagles. Developing the application could be done through informal talks with the USFWS.)

Westminster will do wetlands assessments for the pipelines it will be constructing. Colorado Bird Observatory (CBO), under contract to Westminster, is making a study of the bald eagle's use zones, and their report is due to Westminster April 10, 1993. EG&G was asked by the USFWS to make any bald eagle data available to the CBO for inclusion in their report. Additionally, Preble's meadow jumping mouse surveys have been done by Westminster's consultants, but none were found.

Lee Carlson and John Wegrzyn both stated that the Endangered Species Act and CERCLA will have to be considered when a biological assessment is written. Mr. Wegrzyn stated that they will hold DOE/EG&G to the EPA Framework Document for ecological risk assessments. A formal Section 7 Consultation may or may not be required for RFP activities, depending on initial assessments of impacts. The Section 7 Consultation for RFP will require prior completion of all ecological risk assessments, and inclusion of all findings in the biological assessment. The USFWS has NRDA trusteeship connection to CERCLA actions and to threatened and endangered species.

For activities planned by Broomfield, Westminster, and RFP, the ecological risk of operation and construction must be considered in a cumulative manner. The risk threshold for the biological assessments must be to the bald eagles, rather than to humans. The ecological risk assessments will also require concurrence from the EPA. The ecological risk assessments must consider bioavailability and biomagnification of contaminants of concern.

The prey base of the bald eagles and other organisms will have to be analyzed to assess the ecological risk for any Great Western actions, and any impacts from Westminster actions. DOE is responsible for the proposal of how the ecological risk assessment will be done.

Woman Creek reservoir will have to be assessed for both water quantity and water quality impacts, and for risks inherent in the impounded water.

Dr. Jerry Craig, the Colorado Division of Wildlife eagle expert, has told the USFWS personnel that in his opinion, the eagles will be back and will repeat the mating/nesting behavior next year.

USFWS said that the DOE needs an outline that dovetails the separate projects of Westminster and Broomfield. The reports from these biological assessments will have to be considered in the biological assessment for RFP once all the ecological evaluation work has been completed. The separate projects of Broomfield and Westminster may be evaluated in separate biological assessments if DOE judges this is most efficient. The DOE and the cities are to work together to determine what information will be required, and will develop a biological assessment outline for the USFWS for review and comment. Mark Van Der Puy indicated that because the DOE will not complete the ecological evaluations for several years, that it will be appropriate for the cities to complete their biological assessments independent of that for RFP. The cities are anxious to pursue their activities, and all parties agreed that it is unreasonable for them to await conclusion of RFP evaluations before proceeding with their projects. The USFWS stated that the burden of compliance with the Endangered Species Act and CERCLA rests with the lead agency in this case, the DOE. When asked to assign a single contact for the USFWS to use, Mr. Van Der Puy assigned Bruce Thatcher.

Great Western Reservoir's future is considered a major issue by the USFWS. The impacts of all scenarios must be assessed. Maintaining the status quo must be compared to partial abandonment that results in a wetland or waterfowl refuge, as well as total abandonment that results in the basin being reclaimed to prairie. Food chain studies will have to be included in the assessments of all three scenarios so bioconcentration of contaminants can be addressed.

The USFWS entertained questions from Michael Guillaume, with regard to the OU3 activities that must be performed this spring. The USFWS requested EG&G's forbearance for a few more weeks to allow the bald eagles to get beyond what is considered to be the nesting window. They do not want to permit EG&G activities that may be disruptive until the probable nesting window has passed. Depending on what the eagles actually do, the activities may not be restricted. If the eagles migrate from the area, activities will not be restricted. USFWS agreed that wind tunnel tests may be performed at night when the eagles have left the area for the night roost. This assumes that the eagles remain in the area, but have not started full time use of the nest. The USFWS would like to be allowed the opportunity to observe a wind tunnel test to evaluate how disruptive the activity is, however.

The USFWS and EG&G agreed that EG&G will set up a test of the ultra-highvolume air samplers, possibly at the site location on the southeast shore of Standley Lake, to allow the USFWS to evaluate the noise level of the samplers. How and when the samplers will be operated will be decided after this test run. Jerry Craig will be requested to attend this test run to give his evaluation on whether the sampler will be too disruptive to run while the bald eagles are present.

Weed control mowing can most likely proceed as needed, but any use of chemicals will be subject to EPA approval, and a letter to assess "may affect/no effect" will be required. If the bald eagles are no longer present in the area by mid-May mowing may proceed. If the bald eagles are still present, Jerry Craig will be consulted for an opinion on possible impacts.

Any sampling activities in OU3 can probably be approved through submittal of a letter presenting a brief biological assessment of the activities. Lee Carlson indicated that he uses the

term "biological assessment" broadly, and that in such a case as this, a formal biological assessment is not necessary.